



State of Wisconsin • DEPARTMENT OF REVENUE

DIVISION OF STATE AND LOCAL FINANCE • BUREAU OF UTILITY AND SPECIAL TAXES • 2135 Rimrock Road • P.O. Box 8971 •
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REAL ESTATE TRANSFER NEWS (RETN) MARCH 2003

The following questions and answers are given as general interpretations of the Wisconsin Administrative Code and Statutes. Should you have any questions, please write to:

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Division of State & Local Finance
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This newsletter may be found on the Internet at <http://www.dor.state.wi.us/ust/retn.html>

1Q. We are selling the membership interest in our LLC where the LLC name will remain the same and the only change will be the members who own the LLC. Do we have to file a deed and pay a transfer fee since the members are not related?

A. A change in the membership interest only is considered personal property and not subject to a transfer return if a deed is recorded showing the members of the LLC. This is similar to selling of stock in a corporation in that there is not a conveyance of real property and a deed need not be recorded. Example, XYZ, LLC is owned by 1, 2 and 3 and title to the property is in the name of XYZ, LLC. The members sell their membership interest to 4, 5 and 6. XYZ, LLC still has title to the property and a deed does not have to be recorded since the real property was not conveyed. Whether or not you file a deed to show who the members are is a business decision the members will have to decide upon. If a deed or other document is recorded, language on the document stating something to the effect that "This is being recorded to indicate the current members of XYZ, LLC and is not a conveyance of real property per s. 77.21(1), Stats."

2Q. For transfer fee purposes, we know that a fee is due for a lease of 99 years or more, pursuant to s. 77.21(1), Stats. But how would you measure the number of years for a lease with an initial term of less than 99 years but renewable so that it becomes 99 years or more?

A. Leases less than 99 years are not conveyances of real property per s. 77.21(1), Stats. If the original lease is say 50 years, and once that expires and they decide to renew for another 50 years this would be considered to be less than 99 years and be exempt from return and fee. Again, language of the document should be stated something to the effect that "This is a lease less than 99 years and not a conveyance per s. 77.21(1), Stats." However, if the original lease is for say 50 years with an option to renew for years totaling 99 years or more, than we would consider that a lease for 99 years and subject to return and transfer fee. This situation is similar to a land contract, which is subject to fee.
See also: RETN 3Q, April 1999 <http://www.dor.state.wi.us/ust/retn499.html>

The two above Questions and Answers involve documents without transfer returns. We have instructed the Register of Deeds never to put an exemption on a document without written instructions from the parties on the document. When a return is filed, Line 20 gives the authorization to exempt the document. Without a return, the document itself must state the reason for exemption of return and fee. Any subsequent audit of an exemption would place the responsibility on the filers to substantiate the exemption and not the Register of Deeds. See also: RETN Q5, January 1997 <http://www.dor.state.wi.us/ust/retn197.html> and RETN Q4, March 2002 <http://www.dor.state.wi.us/ust/retn0302.html>

3Q. If a corporation transfers its real estate to its LLC and the ownership in the corporation and LLC are identical, is this exempt from fee under s. 77.25(6m), Stats.?

- A. No. A transfer fee is due on conveyance between separate entities having the same identical ownership. The exemption is for a "conversion" which is only changing the form of the same entity from a corporation to an LLC. A conversion does not create another new entity with the same owners. The exemption is "pursuant to the conversion of a business entity to another form of business entity under s. 179.76, 180.1161, 181.1161, or 183.1207, if, after the conversion, the ownership interests in the new entity are identical with the ownership interests in the original entity immediately preceding the conversion." Also, the use of any of the three 15 exemptions under s. 77.25, Stats. does not apply since this is a conveyance between entities and not between individuals who are related as family members. See the decision with the EPCO case that can be found on the WISBAR web site at: <http://www.wisbar.org/res/txap/2002/01t102.htm>

4Q. The transfer return has a box to be checked for both Grantor and Grantee that if there are more than one, an addendum may be attached per the Instructions (PE-500a) with additional information. May we accept an addendum without addresses or social security numbers for the additional persons?

- A. Yes since it is an option to include an addendum with the additional grantors/grantees. If we have all the information filled out for the person listed on the return, it is not a "rejection" recording when an addendum is not attached. However; when an addendum is included, we would like the same information regarding those persons as is on the return itself. It is in the best interest of those persons to provide the information in case there is some question regarding the conveyance, especially for income tax purposes. If only one name appears, it may indicate that person solely conveyed the property when that person only had a partial interest. The Income Tax Section when comparing the return to that person's income tax return will have a discrepancy with the value and may audit for proper reporting.

5Q. A Marital Settlement Agreement and Judgement of Divorce is being recorded in order to transfer property from an ex-husband to his ex-wife. The husband is unavailable to sign anything. Could the wife sign in both the grantor and grantee areas on the transfer return?

- A. Signing as "agent" is between the grantor/grantee and whom ever is signing. If signatures are not obtainable, fill in "see attached" and attach an addendum stating the facts along with the name, address and telephone number of the person completing the addendum in case the Department of Revenue has any questions. This procedure may also be used when social security numbers are not available. Signatures for both the grantor and grantee (or agent) must be on the same transfer return. You can not submit two returns with one signed by the grantor and another by the grantee. These will be rejected.